

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Time Warner Entertainment-Advance/)	
Newhouse Partnership dba Time Warner)	CSR-6440-A
Cable)	
)	
For Modification of the Syracuse, New York)	
DMA)	

MEMORANDUM OPINION AND ORDER

Adopted: March 9, 2005

Released: March 11, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Time Warner Entertainment-Advance/Newhouse Partnership dba Time Warner Cable ("Time Warner") filed the above-captioned petition for special relief seeking to modify the Syracuse, New York designated market area ("DMA") with respect to television broadcast station WNYI (Ch. 52), Ithaca, New York ("WNYI"). Specifically, Time Warner requests that WNYI be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from 166 communities served by four Time Warner cable systems located in the Syracuse DMA. An opposition to this petition was filed on behalf of EBC Buffalo, Inc., licensee of WNYI, to which Time Warner replied.

II. BACKGROUND

2. Pursuant to its decision in *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*,¹ the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions. This approach, codified in Section 76.59(b) of the Commission's rules, requires that the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

¹14 FCC Rcd 8366, 8385 (1999) ("Modification Final Report and Order").

- (2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.

Note to paragraph [2]: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.²

- (3) Available data on shopping and labor patterns in the local market.
- (4) Television station programming information derived from station logs or the local edition of the television guide.
- (5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.
- (6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.³

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee.⁴ Parties may continue to submit whatever additional evidence they deem appropriate and relevant.

III. DISCUSSION

3. In our review, we note that Time Warner has failed to comply with the requirements set forth in the *Modification Final Report and Order* and Section 76.59(b). While Time Warner did provide a map showing WNYI's predicted Grade B signal contour, this map did not clearly delineate all of the relevant cable communities, their individual distances from WNYI's transmitter site or show any terrain features that might affect station reception (standardized evidence requirements 1 and 2).⁵ The information, as provided, is not sufficient to make a reasoned analysis. Time Warner did not explain why more complete and detailed information was not submitted.

4. In addition, a cursory review indicates that a number of the communities requested for exclusion by Time Warner appear to be located in counties located outside of the Syracuse DMA. If it re-files, Time Warner should clarify the actual communities to be included in its petition. In light of Time

²The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test. See *Modification Final Report and Order*, 14 FCC Rcd at 8388.

³47 C.F.R. § 76.59(b).

⁴47 C.F.R. §§ 76.7, 76.59(c).

⁵See 47 C.F.R. § 76.59(b)(1)-(2).

Warner's failure to provide the information required by Section 76.59, its petition for special relief will be dismissed without prejudice. Time Warner may re-file its request at a later date.

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934 and Section 76.59(c) of the Commission's rules, that the petition for special relief, filed by Family Stations, Inc. **IS DISMISSED WITHOUT PREJUDICE**.⁶

6. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.⁷

FEDERAL COMMUNICATIONS COMMISSION

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⁶47 U.S.C. § 534(h); 47 C.F.R. § 76.59(c).

⁷47 C.F.R. § 0.283.